

J. H. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's summary dismissal of Ms. H.'s complaint against AXA Distribution Holding Corp. ("AXA" hereafter) alleging that AXA discriminated against Ms. H. in violation of the Utah Antidiscrimination Act (Title 34A, Chapter 5, Utah Code Annotated).

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-5-107(11).

BACKGROUND AND ISSUE PRESENTED

In her discrimination complaint, Ms. H. alleged that AXA discriminated against her in the terms and conditions of her employment because of her gender. AXA moved for summary dismissal of the complaint on the grounds that Ms. H.'S relationship with AXA was that of an independent contractor rather than an employee and, as such, was outside the scope of the Utah Antidiscrimination Act. Judge Eblen granted AXA's motion and dismissed Ms. H.'S complaint.

Ms. H. now requests Appeals Board review of Judge Eblen's decision. In summary, Ms. H. argues that AXA exerted sufficient control over the means and manner of her work as to establish an employment relationship.

DISCUSSION AND CONCLUSION OF LAW

Pursuant to §63-46b-1(4)(b) of the Utah Administrative Procedures Act, summary judgment may be granted in proceedings before the Labor Commission "if the requirements of . . . Rule 56 of the Utah Rules of Civil Procedure are met by the moving party" In turn, Rule 56, of the Utah Rules of Civil Procedure allows summary judgment if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."

Judge Eblen summarily dismissed Ms. H.'S complaint in the belief that the Utah Antidiscrimination Act only protects "employees" from employment discrimination. However, the plain language of the Act provides otherwise. Section 34A-5-106(1)(a)(i) provides, in material part, as follows (emphasis added):

An employer may not refuse to hire, promote, discharge, demote, or terminate **any person**, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against **any person** otherwise qualified, because of . . . (C) sex"

The Appeals Board notes that subsection 106(1)(a)(i) does not limit its protection only to "employees," but instead protects "any person." Section 102(14) defines "person" as ". . . one or more individuals" The Appeals Board therefore concludes that Ms. H. is not required to prove an employer/employee relationship with AXA in order to pursue her complaint that she was subjected to discrimination because of her gender.

The Appeals Board sets aside Judge Eblen's summary dismissal of Ms. H.'S complaint and remands this matter to the Adjudication Division for further adjudicative proceedings necessary to determine the merits of Ms. Horrock's complaint.

ORDER

The Appeals Board grants Ms. H.'S motion for review, sets aside Judge Eblen's decision granting summary judgment, and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 31st day of January , 2005.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch